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REMARKS**Claim Rejections – 35 U.S.C. 102 (b)**

Claims 1-19, 23-33, 36-39 and 44-45 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,877,513 to Scarberry. Applicant respectfully traverses these rejections for the reasons now following.

Applicant respectfully wishes to bring to the Examiner's attention that claims 6 and 11 were previously canceled and as such Applicant will not be addressing the Examiner's rejections to those claims.

Dealing first with claims 1-5, independent claim 1 is directed towards one embodiment of the present invention, namely, a tongue retention device comprising a single flange having a first and second surface, wherein the single flange is sized and shaped to be comfortably received between a person's lips and frontal surface of a person's teeth or alveolar ridges if teeth are absent. The Examiner states that Scarberry discloses in figures 1-4 such a flange 12. It is respectfully submitted that Scarberry does not disclose a flange as claimed in claim 1 for the following reasons.

With reference to the embodiment in figures 1-4 of Scarberry, Scarberry discloses an intraoral appliance 10 comprising a formed body 12. Body 12 is described as a unitary, generally rigid structure or, in the alternative, an assembly of structural elements bonded together to form body 12 (column 5, lines 1-10).

Scarberry goes on to state that, as shown in figure 1, the intraoral appliance is retained in a user's oral cavity by interfitting with the user's lower dentition 17 and upper dentition 18. In order to accomplish this, body 12 comprises respective lower and upper dentition receiving trays 22 and 20 shaped to conform generally to a user's lower and upper dentition, respectively (column 5, lines 14-17). These trays "function as a bite block" (column 5, lines 36-37), which can be seen more clearly in figures 3 and 4. Each receiving tray 20 and 22 may carry therein a quantity of impression forming material 24, so that when the user bites into material 24 the user forms exact impressions 26 of the user's dentition (column 5, lines 24-26).

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It is clear from the description in Scarberry that body 12, comprising trays 20 and 22, is not sized and shaped to be received between a person's lips and frontal surface of a person's teeth, but rather is shaped to conform to user's bite and act as a bite block; this teaches away from a single flange that is sized and shaped specifically to fit against the surface of a user's teeth between the user's lips and teeth. The receiving trays 20 and 22 are fitted to the dentition by impressions 26, which may be formed from impression forming material 24 for a more custom fit. Thus, in use, the user positions the Scarberry intraoral appliance by biting on the receiving trays and not by fitting a single flange, which is sized and shaped to fit between the user's lips and frontal surface of his teeth, between the user's lips and teeth, as is the case with Applicant's tongue retention device.

Furthermore, as stated above, body 12 is a rigid structure and hence the trays would also be rigid and as such could not be manipulated, nor are they intended to be manipulated, to fit between the user's lips and frontal surface of the user's teeth. Such manipulation would defeat the purpose of the trays acting as a bite block. Finally, as seen most clearly in figure 4, the trays extend horizontally, the upper tray is curved upwardly on both sides, and the lower tray is curved downwardly. All of these features would make it virtually impossible for the trays to fit between a user's lips and frontal surface of the user's teeth. Regardless, as stated above, fitting the trays between the teeth and the lips would defeat the purpose of the trays acting as a bite block as contemplated by Scarberry.

In summary, it is respectfully submitted that Scarberry does not disclose or suggest a device for retaining a tongue comprising a single flange that is sized and shaped to be comfortably received between a person's lips and frontal surface of a person's teeth or alveolar ridges if teeth are absent. As the Scarberry reference does not disclose all of the elements of claim 1, it is respectfully submitted that claim 1 and dependent claims 2-5 are not anticipated by this prior reference.

Turning next to claims 7-10, 12, 15, and 16, Applicant's independent claim 7 also recites a tongue retention device comprising a single flange, wherein the flange is sized and shaped to be received between a person's lips and frontal surface of a person's teeth or alveolar ridges if teeth are absent. For all the reasons stated above, Scarberry does not disclose a tongue retention device comprising a single flange as claimed in claim 7. As the Scarberry reference does not

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disclose all of the elements of claim 7, it is respectfully submitted that claim 7 and dependent claims 8-10, 12, 15, and 16 are not anticipated by this prior reference.

With respect to claims 13-14, Applicant's independent claim 13 recites a method of retaining a tongue in a predetermined position comprising positioning a flange between a user's lips and frontal surface of said user's teeth. Scarberry discloses two receiving trays 20 and 22, which function as a bite block for receiving the user's upper and lower dentition. Examiner states that figure 2 shows "positioning a flange 12 between the user's lips and the front surface of the user's teeth". However, Scarberry discloses at column 5, lines 54-64:

Referring again to FIGS. 1, 2, and 4, in a preferred embodiment of the present invention, lower dentition tray 22 is provided in a fixed position relative to the upper dentition tray 20. Furthermore, lower tray 22 is offset in an anterior or forward direction, i.e., towards the right in FIGS. 1, 2 and 4, relative to the position of upper tray 20, so that when the user's upper and lower dentitions are engaged within the upper and lower dentition trays, respectively, the lower dentition and corresponding structures, including the jaw or mandible, are disposed forward of their natural position with respect to the upper dentition. [Emphasis added]

Thus, Scarberry discloses engaging a user's dentition within upper and lower dentition trays. Scarberry does not disclose positioning a flange between the user's lips and the front surface of the user's teeth. As the Scarberry reference does not disclose all of the elements of claim 13, it is respectfully submitted that claim 13 and dependent claim 14 are not anticipated by this prior reference.

With respect to claims 17-19 and 23-31, independent claim 17 also recites a tongue retention device comprising a single flange, wherein the flange is sized and shaped to be received between a person's lips and frontal surface of said person's teeth. For all the reasons stated above, Scarberry does not disclose a tongue retention device comprising a single flange as claimed in claim 17. As the Scarberry reference does not disclose all of the elements of claim 17, it is respectfully submitted that claim 17 and dependent claims 18, 19, and 23-31 are not anticipated by this prior reference.

With respect to claims 32-33 and 36-39, independent claim 32 also recites a tongue retention device comprising a single flange, wherein the flange is sized and shaped to be received between a person's lips and frontal surface of said person's teeth. For all the reasons stated

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above, Scarberry does not disclose a tongue retention device comprising a single flange as claimed in claim 32. As the Scarberry reference does not disclose all of the elements of claim 32, it is respectfully submitted that claim 32 and dependent claims 33 and 36-39 are not anticipated by this prior reference.

With respect to claims 44-45, independent claim 44 recites a kit comprising a tongue retention device having a single flange, wherein the flange is sized and shaped to be received between a person's lips and frontal surface of said person's teeth. For all the reasons stated above, Scarberry does not disclose a tongue retention device comprising a single flange as claimed in claim 44. Furthermore, Scarberry does not disclose adjusting the overall size of a single flange. As the Scarberry reference does not disclose all of the elements of claim 44, it is respectfully submitted that claim 44 and dependent claim 45 are not anticipated by this prior reference.

Claim Rejections – 35 U.S.C. 103(a)

Claims 21-22, 34-35 and 44-45 were rejected under 35 U.S.C. 103(a) as being unpatentable over Scarberry. Applicant respectfully traverses these rejections for the reasons now following.

Claims 21 and 22 are dependent on independent claim 17, which claim recites a tongue retention device comprising a single flange, wherein the flange is sized and shaped to be received between a person's lips and frontal surface of said person's teeth. For all the reasons stated above, Scarberry does not disclose a tongue retention device comprising a single flange as claimed in claim 17. Thus, Scarberry does not "disclose in figures 1-4 a device for maintaining a user's tongue, substantially as claimed". Neither does Scarberry suggest such a device, and, more particularly, such a device having a defined thickness or a constant thickness across the device's entire cross-section. Thus, it would not be obvious to the skilled artisan to make a tongue retention device as claimed in claims 22 and 22 in view of Scarberry.

Claims 34-35 are dependant upon independent claim 32, which recites a tongue retention device comprising a single flange, wherein the flange is sized and shaped to be received between a person's lips and frontal surface of said person's teeth. For all the reasons stated above, Scarberry does not disclose a tongue retention device comprising a single flange as claimed in

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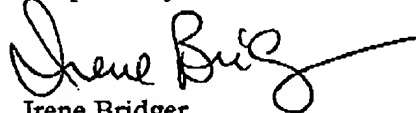
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claim 32. Thus, Scarberry does not "disclose in figures 1-4 a device for maintaining a user's tongue, substantially as claimed". Neither does Scarberry suggest such a device, and, more particularly, such a device having a defined thickness. Thus, it would not be obvious to the skilled artisan to make a tongue retention device as claimed in claims 34-35 in view of Scarberry.

Finally, with respect to claims 44-45, independent claim 44 recites a kit comprising a tongue retention device having a single flange, wherein the flange is sized and shaped to be received between a person's lips and frontal surface of said person's teeth. For all the reasons stated above, Scarberry does not disclose a tongue retention device comprising a single flange as claimed in claim 44. Thus, Scarberry does not "disclose in figures 1-4 a device for maintaining a user's tongue, substantially as claimed". Neither does Scarberry suggest such a device, and, more particularly, such a device included in a kit with instructions on how to adjust the size of such a flange. Thus, it would not be obvious to the skilled artisan to make a kit comprising tongue retention device and instructions on how to adjust the flange of such device, as claimed in claims 44-45, in view of Scarberry.

In view of the arguments presented by Applicant herein, Applicant submits that claims 1-5, 7-10, 12-39, 44 and 45 are in a condition for allowance and such allowance is respectfully requested.

Respectfully submitted,



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